IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3803 of 2000
with
CIVIL APPLICATION No 67 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SOUTH GUJARAT UNIVERSITY TEACHERS ASSOCIATION

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3803 of 2000

MR KS JHAVERI for Petitioner No. 1

MRS MANISHA SHAH, Ld. AGP for Respondent No. 1-3

M/S PATEL ADVOCATES for Respondent No. 1

MR MUKUND M DESAI for Respondent No. 4

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 21/03/2003

COMMON ORAL JUDGEMENT

1. With the consent of the learned Counsel appearing for respective parties, the main SCA No.3803/2000 is taken up for hearing today.

2. The short facts of the case are that the petitioner is challenging the legality and validity of the Government Resolution dated 25-2-2000, whereby the HRA payable to the employees is reduced from 15% to 5% and the petitioner has also prayed for appropriate writ to quash and set aside the order dated 28-12-2001 passed by the Finance Department pursuant to the Government Resolution dated 25-2-2000.

3. At the outset, learned AGP, Mrs.Manisha Shah submitted that in view of the decision of this Court (Coram: P.B.Majmudar, J.) in SCA No.9050 of 2001 and others, the legality and validity of the Resolution dated 25-2-2000 which is also under challenge in this petition is upheld and, therefore, she submitted that the matter is covered by the decision of this Court and the petition deserves to be rejected.

4. Mr.K.S.Jhaveri, learned Counsel appearing for the petitioner, submitted that it is true that the Resolution dated 25-2-2000 is upheld, but he submitted that there are various contentions which are not raised before the learned Single Judge of this Court including that there is discrimination on the ground of curtailing the HRA on the basis of place of working, though it should have been on the basis of accommodation provided or occupied by the employee concerned. Mr.Jhaveri also submitted that as per the decision of this Court (Coram: Jayant Patel, J.) in SCA No.951 of 2002 and allied matters it has been held that HRA is in the nature of reimbursement or compensation for providing accommodation to the employee concerned and in the present case it is an admitted position that Vesu is proposed to be declared as urban agglomeration as per the proposed Census Report of 2001 and, therefore, the situation will be created that the employees will be required to pay more actual rent on the basis of area of urban agglomeration, whereas they will not get HRA at the rate of 15% merely because there is no formal publication of the said Census Report for the area of Vesu. Mr.Jhaveri also submitted that as such there are also other contentions, which were neither raised, nor examined by the learned Single Judge of this Court when the decision was taken in SCA No.9050/2001 and allied matters in the matter of N.R.Parekh v. State of Gujarat.

5. Having considered the above, I am of the view that the coordinate Bench of this Court would be bound by the decision of the learned Single Judge unless the matter is referred to the larger Bench or to the Division Bench as the case may be. At this stage, Mr.Jhaveri made an attempt to allow the petitioner to challenge the order of the learned Single Judge (Coram: P.B.Majmudar, J.) before the Division Bench being aggrieved by the said judgement though they were not impleaded as party. As such no permission is required for such purpose.

6. However, considering the facts and circumstances of the case, I am of the view that the present SCA is covered by the decision of this Court dated 7-3-2003 in SCA No.9050/2001 and in my view, it would not be open to this Court to examine various other contentions which, as per the submissions of Mr.Jhaveri, were not raised in the aforesaid decision and, therefore, this SCA is required to be dismissed in view of the judgement of the coordinate Bench of this Court dated 7-3-2003 in SCA No.9050/2001 and no elaborate reasons are required.

7. In view of the above, the present petition is dismissed. Rule discharged. The interim relief is also vacated. In view of the order passed in the main SCA, Civil Application No.67/2003 shall also stand dismissed since the same would not survive.

8. At this stage, Mr.Jhaveri for the petitioner makes request to continue the operation of the interim order passed in CA No.7/2003 in SCA No.3803/2000 for some time so as to enable the petitioner to have recourse in accordance with law.

9. Considering the facts and circumstances of the case, the interim relief granted earlier shall remain in operation upto 7-4-2003.

21-3-2003 (Jayant Patel, J.)

vinod